



7/78613! JC03 Rec'd PCT/PTO 18 JAN 2002

#2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
PCT UNITED STATES ELECTED OFFICE

ATTY.'S DOCKET: HALID=1

In re Application of:) Art Unit:
)
Michael HALID) Examiner:
)
Appln. No.:) Washington, D.C.
Nationalized: March 1, 2001)
)
I.A. No.: PCT/CH00/00354) January 18, 2002
I.A. Date: June 30, 2000)
)
For: PROTECTIVE UNDERPANTS...) PCT BRANCH

**(1) REQUEST TO CORRECT PTO PAPERS
OR**

**PETITION UNDER 37 C.F.R. 1.182 IN LIEU THEREOF
AND**

**(2) REQUEST FOR FORWARDING OF NOTIFICATION OF MISSING
REQUIREMENTS**

Honorable Commissioner for Patents
Washington, D.C. 20231

Sir:

It has been discovered that when entering the U.S. National Stage of the present application on March 1, 2001, the transmittal letter (form PTO 1390) to the PTO incorrectly identified the PCT application number as PCT/CH99/00366, and not the correct PCT/CH00/00354, although **all other documents filed therewith contained the correct PCT application number and the form PTO 1390 also contained other correct identifying indicia.**

ACTION REQUESTED

Applicant requests (1) correction of the transmittal letter filed March 1, 2001, to reflect the correct PCT application number **PCT/CH00/00354**, and (2) processing of such application including forwarding of the Notification of Missing Requirements to undersigned on behalf of applicant so that the filing of this application can be completed and the application can be passed to an appropriate Examiner for examination.

ATTACHMENT

For convenience, attached hereto is a copy of the transmittal letter filed March 1, 2001, freshly re-signed, in which the PCT application number has been corrected in blue pen, so that the corrected number appears with a line being drawn in blue pen through the incorrect number. Also attached is a postcard receipt from the PTO showing that the papers filed for this application were received in the PTO on March 1, 2001.

Also attached is a copy of a paper filed November 1, 2001, again with the wrong PCT application number entitled "Late Submission Of Declaration And/Or Translation In Application Filed Under 35 USC §371", indicating that we had **not** received any Notification of Missing Requirements, and attaching thereto an executed Declaration in compliance with

37 CFR 1.63. Also attached is a copy of such Declaration which also refers to the wrong PCT number.

THE FACTS

In July, 2001, shortly after discovery of the error, a call was placed to the PTO to request how the error could be corrected. A second call was placed on July 5, 2001, at which time we were referred to Ms. Phyllis Lawrence. A call was placed to Ms. Lawrence on July 5 and a voicemail message was left for her. Some time thereafter, Ms. Lawrence advised that she thought that we would need to file a corrected transmittal with a letter explaining what happened and why, but Ms. Lawrence said she would need to check the file and that she would call back with more definitive instructions. Attempts were made to reach Ms. Lawrence on August 5, August 15, and again in September and October, but contact was not made.

In early November, 2001, the file was removed from the desk of the person in our office who had been attempting to determine how to solve the incorrect PCT identification problem, as explained immediately above. At that time, a clerk in our office prepared the aforementioned document entitled "Late Submission Of Declaration ... Filed Under 35 USC §371" without notification of missing requirements having been received, and the declaration and such paper were filed on November 1, 2001.

In December 2001, the aforementioned errors were rediscovered. The PTO was then called again, this time the call being placed to Mr. Jeremy Flemming, who advised that he would look into the matter. Mr. Flemming advised that he thought, because the papers had been timely filed and we did have a postcard receipt with the correct inventor's name on it, the matter could be resolved such as by filing a petition under 37 CFR 1.182 stating that the papers were inadvertently misdirected to the wrong application, and requesting that they be entered into the correct application. Mr. Flemming indicated that he would check the wrong application file, i.e. PCT/CH 99/00366, which corresponds to application 09/509,999, and would provide more advice at that time. Another telephone conference was had with Mr. Flemming the week between Christmas and New Year's, at which time Mr. Flemming advised the filing of the present paper.

ADDITIONAL REMARKS

Applicant filed the initial papers necessary to enter the U.S. National stage, in a timely fashion, on March 1, 2001. The aforementioned and attached xerographic copy of the return postcard receipt date stamped by the PTO evidences such timely filing as per MPEP § 503.

It is respectfully noted that all other indicia on the papers filed on March 1, 2001, including the inventor's

name, the International filing date, the title of the invention and the claimed priority date were correct on the transmittal letter form (corrected copy attached), on the form PTO-1390, and on the attachments including the first page (cover page) of International publication WO01/01911 A1. Also, the correct application number was on the specification and on the first page of the international publication, copies of which were filed with the transmittal letter (form PTO 1390) on March 1, 2001.

MPEP § 502 contemplates that papers are sometimes filed with an incorrect application number, and the PTO has mechanisms in place to deal with such problems. Thus, MPEP Section 502 states in part as follows (August 2001 edition, page 500-6):

A minor error in the identification of the application can be corrected by the group provided the correct identification can be quickly discovered.

Applicant gave a number on the form PTO 1390, but it was incorrect, although other identifying indicia were present as indicated above, as was the correct number on other papers filed therewith. This is believed to be a minor error in view of the fact that all other indicia of identification were correct.

With all such correct indicia of identification, applicant believes that the correct application number could

have been quickly discovered and thus corrected by the group as indicated in MPEP § 502.

MPEP § 502 further states as follows with regard to errors in the application number:

Frequently, there are errors in the application number... .

... .

Where such papers [not containing sufficient identification] are not essential to compliance with a statutory period or time limit for reply, they may be returned for completion to identify the location of the files. [bracketed material added]

In the present case, the papers filed were absolutely necessary as a term was running. It would seem that the PTO clerk who may have merely deposited such papers and payment in the wrong file (if indeed, this happened) should have at least informed applicant of the error in the International application number.

Even though a minor error appeared in the transmittal form PTO-1390 and all the other information was correct, the PTO should have easily been able to associate such transmittal and filing fee payment with the present application.

It is believed that the present situation is also covered by the decision of the Federal Circuit in *Helpgott & Karas P.C. v. Dickinson*, 54 USPQ2d 1425 (Fed Cir 2000), which involved the filing of a demand which contained the wrong

application serial number. In ruling in favor of the applicant, the court stated (54 USPQ2d at 1431):

Applicants whom mistakenly transpose digits in the application number placed on file documents would be at risk that the Commissioner would adopt the wooden position he takes here: that the application number cannot later be changed, ..., because the erroneous document appears to relate to another application. This we cannot allow. The Commissioner 's refusal to accept these changes was legally incorrect.

Although applicant's PCT number was incorrect in the transmittal letter (only in the transmittal letter), the papers in their entirety including all other indicia correctly identified the International application in question.

In view of the above evidence of the date stamped postcard receipt, it is clear that applicant timely entered the U.S. National stage on March 1, 2001, as MPEP 503 states:

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of the receipt in the USPTO of all items listed thereon on the date stamped thereon by the PTO.

Applicant's request made above should therefore be granted.

As it appears that the original papers filed on March 1, 2001, may have been misplaced by and within the PTO, attached hereto is the aforementioned duplicate copy of all the papers filed on that date, freshly re-signed as indicated

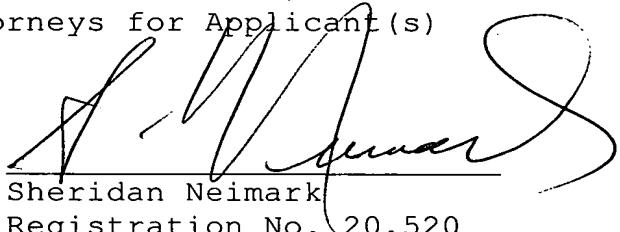
above, and wherein the transmittal letter bears the corrected PCT number in blue ink.

If any fee is due, e.g. a petition fee, please charge same to deposit account 02-4035.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant(s)

By



Sheridan Neimark
Registration No. 20,520

SN:jaa/edg

Telephone No.: (202) 628-5197

Facsimile No.: (202) 737-3528

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FILED: March 1, 2001

APPLICANT(S): Michael HALID

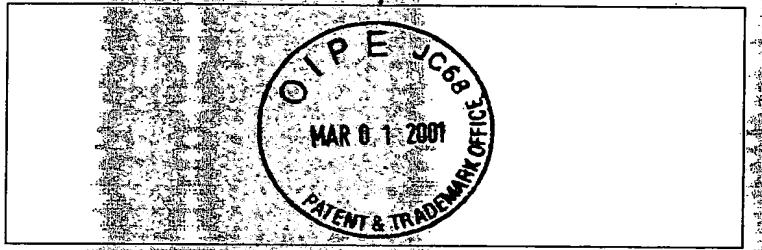
THE PATENT AND TRADEMARK OFFICE STAMP HEREON
ACKNOWLEDGES RECEIPT OF THE ABOVE-IDENTIFIED
APPLICATION, INCLUDING THE FOLLOWING PAPERS:

FEES \$ 565.00 (CH. # PTO-2038)

- PCT APPLICATION
- TRANSMITTAL LETTER REQUEST
- FEE CALCULATION SHEET
- SPECIFICATION (_____ pages)
- DRAWINGS (_____ sheets; _____ figures)
- SEQUENCE LISTING WITH DISK
- APPOINTMENT OF AGENT
- INVITATION TO CORRECT DEFECTS
- REQUEST FOR RECTIFICATION
- DEMAND FOR CHAPTER II
- ARTICLE 34 AMENDMENTS
- RESPONSE TO WRITTEN OPINION
- U.S. NATIONAL PHASE OF INTERNATIONAL APPLICATION
- TRANSMITTAL LETTER
- DECLARATION (_____ pages)
- SMALL ENTITY STATEMENT(S) (_____ pages)
- PRELIMINARY AMENDMENT
- OTHER

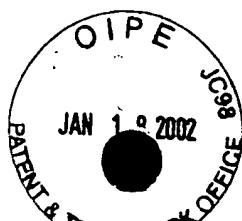
&N-5

DOCKET NO: HALID 1
BASED ON: PCT/CH99/00366



- SUPPLEMENTAL PRELIMINARY AMENDMENT
- INFORMATION DISCLOSURE STATEMENT (_____ pages)
 - FORM 1449 (_____ pages)
 - PATENTS AND/OR PRINTED PUBLICATIONS
- SEQUENCE LISTING WITH DISK
- COURTESY COPY
- SPECIFICATION (21 _____ pages)
- DRAWINGS (6 _____ sheets; 1-18 _____ figures)
- 1ST PAGE INTERNATIONAL PUBLICATION
- INTERNATIONAL SEARCH REPORT
- IPER WITH WITHOUT ANNEXES
- ENGLISH LANGUAGE TRANS OF SPECIFICATION AS FILED
- ENGLISH LANGUAGE TRANS OF ANNEXES TO IPER
- SUBSTITUTE SPECIFICATION

INITIALS: WRD



PTO-2038 (02-2000)

Approved for use through 01/31/2003. OMB 0651-0043

United States Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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United States Patent & Trademark Office

Credit Card Payment Form

Please Read Instructions before Completing this Form

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Credit Card Type: Visa MasterCard American Express DiscoverCredit Card Account #: **004**Credit Card Expiration Date: **08/03**Name as it Appears on Credit Card: **Roger L. Browdy**Payment Amount: \$(US Dollars): **\$ 65.00**Signature: *Roger L. Browdy*Date: **March 1, 2001**

Refund Policy: The Office may refund a fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee will not entitle a party to a refund of such fee. The Office will not refund amounts of twenty-five dollars or less unless a refund is specifically requested, and will not notify the payor of such amounts (37 CFR 1.26). Refund of a fee paid by credit card will be via credit to the credit card account.

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City: **Washington**State: **DC**Zip/Postal Code: **20001**Country: **USA**Daytime Phone #: **202-628-5197**Fax #: **202-737-3528**

Request and Payment Information

Description of Request and Payment Information:

Filing Fee

Patent Fee

Patent Maintenance Fee

Trademark Fee

Other Fee

Application No.

Application No.

Serial No.

IDON Customer No.

Patent No.

Patent No.

Registration No.

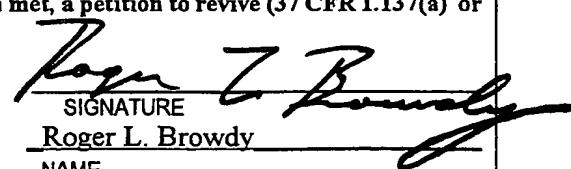
Attorney Docket No.

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HALID 1.

If the cardholder includes a credit card number on any form or document other than the Credit Card Payment Form, the United States Patent & Trademark Office will not be liable in the event that the credit card number becomes public knowledge.

U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE		ATTORNEY'S DOCKET NUMBER HALID 1
TRANSMITTAL LETTER TO THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US) CONCERNING A FILING UNDER 35 U.S.C. 371		U.S. APPLICATION NO. (If known, see 37 CFR 1.5)
INTERNATIONAL APPLICATION NO. PCT/CH99/00366 PCT/CH00/00364	INTERNATIONAL FILING DATE 30 June 2000	PRIORITY CLAIMED 01 July 1999
TITLE OF INVENTION PROTECTIVE UNDERPANTS AND METHOD FOR PRODUCING THE SAME		
APPLICANT(S) FOR DO/EO/US Michael HALID		
<p>Applicant herewith submits to the United States Designated/Elected Office (DO/EO/US) the following items and other information:</p> <ol style="list-style-type: none"> 1. <input checked="" type="checkbox"/> This is a FIRST submission of items concerning a filing under 35 U.S.C. 371. 2. <input type="checkbox"/> This is a SECOND or SUBSEQUENT submission of items concerning a filing under 35 U.S.C. 371. 3. <input checked="" type="checkbox"/> This is an express request to begin national examination procedures (35 U.S.C. 371(f)) at any time rather than delay examination until the expiration of the applicable time limit set in 35 U.S.C. 371(b) and PCT Articles 22 and 39(1). 4. <input type="checkbox"/> The US has been elected in a Demand by the expiration of 19 months from the priority date (PCT Article 31). 5. <input checked="" type="checkbox"/> A copy of the International Application as filed (35 U.S.C. 371(c)(2)) <ul style="list-style-type: none"> a. <input type="checkbox"/> is attached hereto (required only if not transmitted by the International Bureau). b. <input checked="" type="checkbox"/> has been communicated by the International Bureau. c. <input type="checkbox"/> is not required, as the application was filed in the United States Receiving Office (RO/US). 6. <input type="checkbox"/> An English language translation of the International Application as filed (35 U.S.C. 371(c)(2)). 7. <input checked="" type="checkbox"/> Amendments to the claims of the International Application under PCT Article 19 (35 U.S.C. 371(c)(3)) <ul style="list-style-type: none"> a. <input type="checkbox"/> are transmitted herewith (required only if not transmitted by the International Bureau). b. <input type="checkbox"/> have been communicated by the International Bureau. c. <input type="checkbox"/> have not been made; however, the time limit for making such amendments has NOT expired. d. <input checked="" type="checkbox"/> have not been made and will not be made. 8. <input type="checkbox"/> An English language translation of the amendments to the claims under PCT Article 19 (35 U.S.C. 371(c)(3)). 9. <input type="checkbox"/> An oath or declaration of the inventor(s) (35 U.S.C. 371(c)(4)). 10. <input type="checkbox"/> An English language translation of the annexes to the International Preliminary Examination Report under PCT Article 36 (35 U.S.C. 371(c)(5)). <p>Items 11. to 16. below concern document(s) or information included:</p> <ol style="list-style-type: none"> 11. <input type="checkbox"/> An Information Disclosure Statement under 37 CFR 1.97 and 1.98. 12. <input type="checkbox"/> An Assignment document for recording. A separate cover sheet in compliance with 37 CFR 3.28 and 3.31 is included. 13. <input type="checkbox"/> A FIRST preliminary amendment. <input type="checkbox"/> A SECOND or SUBSEQUENT preliminary amendment. 14. <input type="checkbox"/> A substitute specification. 15. <input type="checkbox"/> A change of power of attorney and/or address letter. 16. <input checked="" type="checkbox"/> Other items or information: <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Courtesy copy of the first page of the International Publication (WO 01/01911). <input checked="" type="checkbox"/> Courtesy copy of the International Application as originally filed. <input checked="" type="checkbox"/> Courtesy copy of the International Search Report. 		

U.S. APPLICATION NO. (If known, see 37 CFR 1.5)	International Application No. PCT/CH99/00366	Attorney's Docket No. HALID 1	
<p>17. [xx] The following fees are submitted:</p> <p>BASIC NATIONAL FEE (37 CFR 1.492 (a)(1)-(5): Neither international preliminary examination fee (37 CFR 1.482) nor international search fee (37 CFR 1.445(a)(2)) paid to USPTO and International Search Report not prepared by the EPO or JPO.....\$1000.00</p> <p>International preliminary examination fee (37 CFR 1.482) not paid to USPTO but International Search Report prepared by the EPO or JPO.....\$860.00</p> <p>International preliminary examination fee (37 CFR 1.482) not paid to USPTO but international search fee (37 CFR 1.445(a)(2)) paid to USPTO.....\$710.00</p> <p>International preliminary examination fee paid to USPTO (37 CFR 1.482) but all claims did not satisfy provisions of PCT Article 33(1)-(4).....\$690.00</p> <p>International preliminary examination fee paid to USPTO (37 CFR 1.482) and all claims satisfied provisions of PCT Article 33(1)-(4).....\$100.00</p>		CALCULATIONS PTO USE ONLY	
ENTER APPROPRIATE BASIC FEE AMOUNT =		\$ 1,000.00	
Surcharge of \$130.00 for furnishing the oath or declaration later than [X] 20 [] 30 months from the earliest claimed priority date (37 CFR 1.492(e)).		\$ 130.00	
Claims as Originally Presented	Number Filed	Number Extra	Rate
Total Claims	- 20		X \$18.00 \$
Independent Claims	- 3		X \$80.00 \$
Multiple Dependent Claims (if applicable)			+\$270.00 \$
TOTAL OF ABOVE CALCULATIONS =		\$ 1,130.00	
Claims After Post Filing Prel. Amend	Number Filed	Number Extra	Rate
Total Claims	- 20		X \$18.00 \$
Independent Claims	- 3		X \$78.00 \$
TOTAL OF ABOVE CALCULATIONS =		\$ 1,130.00	
Reduction of $\frac{1}{2}$ for filing by small entity, if applicable. Applicant claims small entity status. See 37 CFR 1.27.		\$ 565.00	
SUBTOTAL =		\$ 565.00	
Processing fee of \$130.00 for furnishing the English translation later than [X] 20 [] 30 months from the earliest claimed priority date (37 CFR 1.492(f)).		\$ 130.00	
TOTAL NATIONAL FEE =		\$ 695.00	
Fee for recording the enclosed assignment (37 CFR 1.21(h)). The assignment must be accompanied by an appropriate cover sheet (37 CFR 3.28, 3.31). \$40.00 per property +		\$	
TOTAL FEES ENCLOSED =		\$ 695.00	
		Amount to be: refunded charged	
		\$	
<p>a. [] A check in the amount of \$ _____ to cover the above fees is enclosed.</p> <p>b. [X] Credit Card Payment Form (PTO-2038), authorizing payment in the amount of \$ 695.00, is attached.</p> <p>c. [] Please charge my Deposit Account No. 02-4035 in the amount of \$ _____ to cover the above fees.</p> <p>A duplicate copy of this sheet is enclosed.</p> <p>d. [XX] The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 02-4035. A duplicate copy of this sheet is enclosed.</p>			
<p>NOTE: Where an appropriate time limit under 37 CFR 1.494 or 1.495 has not been met, a petition to revive (37 CFR 1.137(a) or (b)) must be filed and granted to restore the application to pending status.</p>			
<p>SEND ALL CORRESPONDENCE TO:</p> <p>BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, N.W., SUITE 300 WASHINGTON, D.C. 20001 TEL: (202) 628-5197 FAX: (202) 737-3528 Date of this submission: March 1, 2001</p>			
<p> SIGNATURE Roger L. Browdy</p> <p>NAME 25,618</p> <p>REGISTRATION NUMBER</p>			

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Application Division
 HALID, Michael PCT/CH00/00354
 Serial No.: PCT/CH00/00356 ATTN: PCT
 Filing Date: March 1, 2001 Washington, D.C.
 For: Protective Pants And Method... Confirmation No.
 November 1, 2001

LATE SUBMISSION OF DECLARATION AND/OR TRANSLATION IN APPLICATION FILED UNDER 35 USC
\$371

HON. COMMISSIONER OF PATENTS AND TRADEMARKS
 Washington, D.C. 20231

Sir:

NO "NOTIFICATION OF MISSING REQUIREMENTS..." has been received by applicant.

Attached hereto is an executed oath or declaration in compliance with 37 C.F.R. 1.63, identifying the present application by title, PCT information and priority information.

Applicant claims small entity status. See CR 1.27.

Preliminary Amendment and Statements in Support of Filing and Submissions in Accordance with 37 C.F.R. §1.821-1.825, Sequence Listing (hardcopy), and computer-readable form of Sequence Listing.

An Information Disclosure Statement with 1449 and references is also attached.

A Preliminary Amendment

An exact English language translation of the PCT application as originally filed.

Other documents: _____

Surcharge for late filing of English translation \$ 130.00

Surcharge for late filing of the Declaration was paid on _____

Surcharge for late filing of the Declaration in the amount of:
 Small Entity Other than Small Entity
 \$65.00 \$130.00

It is hereby petitioned for an extension of time in accordance with 37 C.F.R. 1.136(a). The appropriate fee required by 37 C.F.R. 1.17 is calculated as shown below:

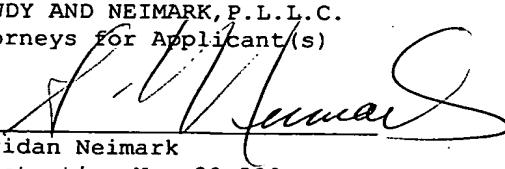
Small Entity	Other Than Small Entity
Response Filed Within	Response Filed Within
<input type="checkbox"/> First - \$ 55.00	<input type="checkbox"/> First - \$ 110.00
<input type="checkbox"/> Second - \$ 200.00	<input type="checkbox"/> Second - \$ 400.00
<input type="checkbox"/> Third - \$ 460.00	<input type="checkbox"/> Third - \$ 920.00
<input type="checkbox"/> Fourth - \$ 720.00	<input type="checkbox"/> Fourth - \$1,440.00
Month After Time Period Set	Month After Time Period Set

Conditional Petition for Extension of Time:
 If any extension of time for a response is required, applicant requests that this be considered a petition therefor.

Credit Card Payment Form, PTO-2038, authorizing payment the amount of \$ enclosed to cover the above fees.

The Commissioner is hereby authorized and requested to charge any additional fees which may be required in connection with this application or credit any overpayment to Deposit Account No. 02-4035. This authorization and request is not limited to payment of all fees associated with this communication, including any Extension of Time fee, not covered by check or specific authorization, but is also intended to include all fees for the presentation of extra claims under 37 CFR 1.16 and all patent processing fees under 37 CFR 1.17 throughout the prosecution of the case. This blanket authorization does not include patent issue fees under 37 CFR 1.18.

BROWDY AND NEIMARK, P.L.L.C.
 Attorneys for Applicant(s)

By: 
 Sheridan Neimark
 Registration No. 20,520

(202) 628-5197

SN:tw